

REMARKS

Reconsideration of the application is respectfully requested in view of the above amendments and following remarks.

Claims 39-64 were pending in the present application. Claims 53 – 63 were previously withdrawn. Claims 39-45 are rejected. Claims 46-52 and 64 are objected to. Claims 44, 46 and 53 – 63 have been canceled. Claims 39 and 64 have been amended. Claims 39-43, 45, 47-52 and 64 are currently pending in the present application.

Claim 39 has been amended to delete the definitions of R<sup>1</sup> and R<sup>2</sup>, and to add the definition of R<sup>1</sup> from Claim 44, and the definition of R<sup>2</sup> from Claim 46. Support for the added definitions of R<sup>1</sup> and R<sup>2</sup> in amended Claim 39 is found in the specification on page 7, line 34 to page 8, line 3; page 8, lines 24-28; and in previously presented Claims 44-46.

Claims 44 and 46 have been canceled without prejudice to pursuing the canceled subject matter in a divisional application.

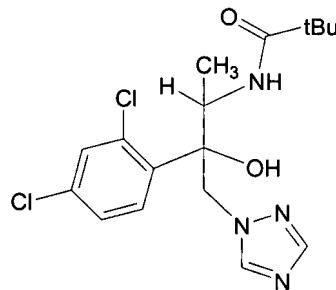
Method of treatment Claims 53 to 63, which were previously withdrawn by the Examiner, have been canceled without prejudice to pursuing the canceled subject matter in a divisional application.

Claim 64 has been amended to depend from Claim 39 instead of Claim 1, since Claim 1 was previously canceled.

No new matter has been added to the above-captioned application by the above amendments.

Claim Rejections - 35 USC § 102

Claims 39 - 45 are rejected under 35 USC 102(b) as being anticipated by Konosu et al. (Chem. Pharm. Bull. 1991, 39(10), 2581-2589). The Examiner stated that Konosu et al. discloses compound 8 on page 2582, Chart 2:



The Examiner also stated that compound 8 was tested in vivo for anti-fungal activity and therefore meets the limitation directed to composition.

Applicants have amended Claim 39 to delete the definitions of R<sup>1</sup> and R<sup>2</sup>, and to add the definition of R<sup>1</sup> from Claim 44, and the definition of R<sup>2</sup> from Claim 46. Applicants have also canceled Claim 44, therefore the rejection of Claim 44 is moot.

Applicants submit that as currently amended, the compositions of Claims 39-43 and 45 do not include compounds in which R<sup>1</sup> or R<sup>2</sup> can be a triazole-CH2- moiety. Amended Claim 39 excludes compositions which read on the compounds, including compound 8, of the Konosu reference. Claims 40-43 and 45 depend from Claim 39, and incorporate the amendments to Claim 39.

As currently amended, the compositions of Claims 39-43 and 45 do not include compounds of formula (I) in which R<sup>1</sup> or R<sup>2</sup> can be triazole-CH2-. Therefore, the compounds disclosed in the Konosu reference do not fall within the scope of the amended Claim 39 and dependent Claims 40-43 and 45 of the present invention.

In view of the amendments to Claim 39 and the cancellation of Claim 44, Applicants respectfully submit that the present Claims are novel and request reconsideration and withdrawal of the rejection of Claims 39-45 under 35 USC 102(b).

Allowable Subject Matter

Claims 46-52 and 64 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants have canceled Claim 46, therefore the objection to Claim 46 is moot. Applicants have also amended Claim 64 to depend from Claim 39 instead of Claim 1.

Applicants submit that Claims 47-52 and 64 are dependent from Claim 39 or from claims that depend from Claim 39, and therefore incorporate the amendments to Claim 39.

In view of the amendments to Claim 39 and the cancellation of Claim 46, Applicants respectfully submit that the present claims are novel and request reconsideration and withdrawal of the objection to Claims 47-52 and 64 as being dependent upon rejected base claims.

Serial No.: 10/538,395  
Case No.: 21261P  
Page No.: 11

Applicants believe that all of the rejections have been overcome and therefore earnestly solicit an early Notice of Allowance.

Respectfully submitted,

By

  
Baerbel R. Brown, Reg. No. 47,449  
Attorney for Applicants

MERCK & CO., Inc.  
P.O. Box 2000  
Rahway, NJ 07065-0907  
Tel.: (732)594-0672

October 12, 2007